IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

MONDAY, THE 10TH SEPTEMBER 2007 / 19TH BHADRA 1929

Crl.L.P..No. 522 of 2007()

CC.449/2002 of J.M.F.C., SASTHAMCOTTA

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APPELLANT/ COMPLAIINANT

SHAHUL HAMEED RAWTHER,
THENGUVILA THEKKETHIL VEEDU,
THEKKE MURI, SOORANAD NORTH VILLAGE.

BY ADV. SRI.SOORANAD S.SREEKUMAR

RESPONDENTS: ACCUSED

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1. BASHEER,
S/O. AMMAD. THONDIYIL HOUSE,
NANMUNDA MURI,KOZHIKODE VILLAGE.

2. THE STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY P.P.SRI.THOMAS JOHN AMBOOKKAN FOR R2

THIS CRIMINAL LEAVE PETITION HAVING BEEN FINALLY HEARD ON 10/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K. Thankappan, J.

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Crl.L.P. No. 522 of 2007

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Dated this the 10th day of September, 2007

O R D E R

This is a petition to special leave to appeal filed by the complainant in C.C.No.449/2002 on the file of the Court of the Judicial Magistrate of the First Class, Sasthamcotta. In the complaint it is stated that the 1st respondent borrowed an amount of Rs.6,00,000/- from the petitioner and in discharge of the above debt, he issued Ext.P1 cheque to the petitioner and when the cheque was presented for encashment, it was dishonoured for insufficiency of funds. To prove the case against the 1st respondent the petitioner himself was examined as PW1 and Exts.P1 to P6(a) were marked. After closing the evidence on the side of the prosecution, the 1st respondent was questioned under section 313 Cr.P.C. He denied the allegations and stated that while 1st respondent was working in Soudi Arabia he and Noushad, son of the petitioner, were co-workers. He also stated that the 1st respondent joined a chitty and for securing the prize money he had entrusted a signed blank cheque and some other documents as security to the fore-man of chitty and on attaining maturity, the fore-man had returned the documents to the 1st respondent and knowing well this aspect Noushad had

stolen the signed blank cheque, conveyed to his father and misusing the above cheque the complaint was filed by the petitioner. On the side of the defence, the 1st respondent himself was examined as DW1 and Exts.D1 to D2(a) were marked. The trial court after considering the entire evidence found that the petitioner failed to prove the transaction between the petitioner and the 1st respondent which led to the issuance of Ext.P1 cheque. Hence, the 1st respondent was acquitted.

2. This Court heard the learned counsel for the appellant and perused the materials placed on record. The specific case alleged in the complaint was that the 1st respondent borrowed an amount of Rs.6,00,000/- from the petitioner and in discharge of the said amount, the 1st respondent issued Ext.P1 cheque in favour of the petitioner. The trial court after evaluating the entire evidence found that on 8-1-2002, the date of so-called transaction, the 1st respondent was in Soudi Arabia and there was absolutely no possibility of any transaction by the petitioner in person with the 1st respondent on the aforesaid date at the latter's residence at Sooranad South Village, which is within the jurisdiction of this Court. The purpose for which the amount was advanced to the 1st respondent was differently stated by the petitioner during his examination in court as PW1. The evidence of PW1 would show that the petitioner had no intense friendship with the 1st

respondent. The trial court further found that even the evidence adduced from the side of the petitioner was not sufficient to prove the issuance of cheque by the 1st respondent, which includes the drawl of cheque and payment of sum.

3. After considering the entire evidence, this Court is of the view that the findings entered by the trial court are on evidence and they require no interference by this Court. Hence, leave to appeal is rejected.

K. Thankappan,
Judge.

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K.Thankappan,J.

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Crl.l.P.No. 108/2007

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ORDER

10-9-2007